APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,584	09/29/2000	John K. Kaltenmark	10022/043	3191

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EXAMINER
BAYARD, DJENANE M

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/676,584	KALTENMARK ET AL.
	Examiner	Art Unit	
	Djenane M. Bayard	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   This is in response to amendment filed on 11/16/05 in which claims 1-28 remain pending.

Response to Amendment

2.   The affidavit filed on 11/16/05 under 37 CFR 1.131 has been considered but is

ineffective to overcome the Guheen et al reference.

3.   The affidavit or declaration must state FACTS and produce such documentary evidence

and exhibits in support thereof as are available to show conception and completion of

invention in this country or in a NAFTA or WTO member country (MPEP § 715.07(c)), at least

the conception being at a date prior to the effective date of the reference. Where there has not

been reduction to practice prior to the date of the reference, the applicant or patent owner must

also show diligence in the completion of his or her invention from a time just prior to the date of

the reference continuously up to the date of an actual reduction to practice or up to the date of

filing his or her application (filing constitutes a constructive reduction to practice, 37 CFR

1.131). As discussed above, 37 CFR 1.131(b) provides three ways in which an applicant can

establish prior invention of the claimed subject matter. The showing of facts must be sufficient to

show:

        (A)   > (actual)< reduction to practice of the invention prior to the effective date of

        the reference; or

        (B)   conception of the invention prior to the effective date of the reference coupled

with due diligence from prior to the reference date to a subsequent (actual)

reduction to practice; or

(C)   conception of the invention prior to the effective date of the reference coupled

with due diligence from prior to the reference date to the filing date of the

application (constructive reduction to practice).

(A)   **Reduction to practice**

The evidence submitted is insufficient to establish a reduction to practice of the invention

in this country or a NAFTA or WTO member country prior to the effective date of the Guheen et

al reference. In general, proof of actual reduction to practice requires a showing that the

apparatus actually existed and worked for its intended purpose. The showing must be by way of

facts. Facts not conclusion must be alleged (MPEP 715.07). In general, proof of actual

reduction to practice requires a showing that the apparatus actually existed and worked for its

intended purpose. Note, the exhibit provided alleges to include "each and every feature of the

invention disclosed in claims 1-28 of the patent application". FACTS, not conclusions, must be

alleged. Evidence in the form of exhibits may accompany the affidavit or declaration. Each

exhibit relied upon should be specifically referred to in the affidavit or declaration, in terms of

what it is relied upon to show. For example, the allegations of fact might be supported by

submitting as evidence one or more of the following:

(A)   attached sketches;

(B)   attached blueprints;

(C)   attached photographs;

(D)   attached reproductions of notebook entries;

(E)   an accompanying model;

(F)   attached supporting statements by witnesses, where verbal disclosures are the

evidence relied upon. Ex parte Ovshinsky, 10 USPQ2d 1075 (Bd. Pat. App. &

Inter. 1989);

(G)   testimony given in an interference. Where interference testimony is used, the

applicant must point out which parts of the testimony are being relied on;

examiners cannot be expected to search the entire interference record for the

evidence. Ex parte Homan, 1905 C.D. 288 (Comm'r Pat. 1905);

(H)   Disclosure documents (MPEP § 1706) may be used as documentary evidence

of conception.

Exhibits and models must comply with the requirements of 37 CFR 1.91 to be entered into an

application file. See also MPEP § 715.07(d). A general allegation that the invention was

completed prior to the date of the reference is not sufficient. Ex parte Saunders, 1883 C.D. 23, 23

O.G. 1224 (Comm'r Pat. 1883). Similarly, a declaration by the inventor to the effect that his or

her invention was conceived or reduced to practice prior to the reference date, without a

statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37

CFR 1.131. 37 CFR 1.131(b) requires that original exhibits of drawings or records, or

photocopies thereof, accompany and form part of the affidavit or declaration or their absence

satisfactorily explained. In Ex parte Donovan, 1890 C.D. 109, 52 O.G. 309 (Comm'r Pat. 1890)

the court stated. At a minimum a print out copy of the book must be provided to support the

allegation.

(B) Conception

The evidence submitted is insufficient to establish a conception of the invention prior to the

effective date of the Guheen reference. While conception is the mental part of the inventive act,

it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to

another. Conception is more than a vague idea of how to solve a problem. The requisite means

themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*,

1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). As described above, the showing of conception

must be by way of facts not conclusions. Conception is the mental part of the inventive act, but

it must be capable of proof, as by drawings, complete disclosure to another person, etc. In

Mergenthaler v. Scudder, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897), it was established that

conception is more than a mere vague idea of how to solve a problem; the means themselves and

their interaction must be comprehended also.

(C) Diligence

The evidence submitted is insufficient to establish diligence from a date prior to the date

of reduction to practice of the Guheen et al reference to either a constructive reduction to practice

or an actual reduction to practice. The evidence submitted is insufficient to establish diligence

from a data prior to the reference date to constructive reduction to practice. Where conception

occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough

merely to allege that applicant or patent owner had been diligent. Ex parte Hunter, 1889 C.D.

218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts

establishing diligence. In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration,

diligence need not be considered unless conception of the invention prior to the effective date is

clearly established, since diligence comes into question only after prior conception is established.

Ex parte Kantor, 177 USPQ 455 (Bd. App. 1958). What is meant by diligence is brought out in

Christie v. Seybold, 1893 C.D. 515, 64 O.G. 1650 (6th Cir. 1893). In patent law, an inventor is

either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant

may be diligent within the meaning of the patent law when he or she is doing nothing, if his or

her lack of activity is excused. Note, however, that the record must set forth an explanation or

excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for

delay or inactivity. See In re Nelson, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970). Diligence

must be judged on the basis of the particular facts in each case. See MPEP § 2138.06 for

a detailed discussion of the diligence requirement for proving prior invention. Under 37 CFR

1.131, the critical period in which diligence must be shown begins just prior to the effective date

of the reference or activity and ends with the date of a reduction to practice, either actual or

constructive (i.e., filing a United States patent application). Note, therefore, that only diligence

before reduction to practice is a material consideration. The "lapse of time between the

completion or reduction to practice of an invention and the filing of an application thereon" is

not relevant to an affidavit or declaration under 37 CFR 1.131. See Ex parte Merz, 75 USPQ 296

(Bd. App. 1947). (See MPEP 715.7 (a))

4.   In conclusion, the affidavit or declaration and exhibits must clearly explain which facts or

data applicant is relying on to show completion of his or her invention prior to the particular

date. Vague and general statements in broad terms about what the exhibits describe along with a

general assertion that the exhibits describe a reduction to practice "amounts essentially to mere

pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the

requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974).

Applicant must give a clear explanation of the exhibits pointing out exactly what facts are

established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry,

333 F.2d 920, 142 USPQ 164 (CCPA 1964).

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

6.   Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No.

2004/01071275 to Guheen et al.

a.   As per claim 1, Guheen et al teaches An operations architecture for a netcentric

computing system, comprising: a server connected with a client (See page 39, paragraph [0921]);

and a software distribution tool (See page 56, paragraph [1481]), a configuration and asset

management tool (See page 40, paragraph [0950]), a fault management and recovery

management tool (See page 84, paragraph [2373-2376]), a capacity planning tool (See page 83,

paragraph [2324], a performance management tool (See page 80, paragraph [2231-2232]), a

license management tool (See page 95, paragraph [2759-2760]), a remote management tool (See

page 80, paragraph [2324]), a event management tool (See page 83, paragraph [2321-2322]) , a

systems monitoring and tuning tool (See page 97, paragraph [2830-2832]), a security tool

configured to limit access of said client to said server based on role based access control (See

page 44, paragraph [1099], page 152, paragraph [3980],), a user administration tool (See page

91, paragraph [2625-2626]), a production control application set configured to automatically

archive a predetermined set of files (See page 85, paragraph [2396-2397], page 86 paragraph

[2454] and page 89, paragraph [2563-2564]) and a help desk tool adapted to measure the

performance of support personnel supporting said server and said client in said netcentric

computing system (See page 82 paragraph [2302-2312] and page 83, paragraph [2324-2326).

b.   As per claims 19 and 24 Guheen et al teaches an operations architecture for a netcentric

computing system, comprising: a server connected with a client (See 39, paragraph [0921]); a

software distribution tool for providing automated delivery to, and installation of, an application

on said server or said client (See page 56, paragraph [1481], Software and data distribution tools

enable automated distribution of data and software to the workstations and servers in the

development environment); a configuration and asset management tool for managing a plurality

of predetermined assets connected with said netcentric computing system (See page 40,

paragraph [0950]), Configuration Management tools cover the version control, migration control

and change control of system components such as code and its associated documentation); a fault

management and recovery management tool for assisting in the diagnosis and correction of a

plurality of system faults in said netcentric computing system (See page 84 , paragraph [2373-2376], when a negative event has been brought to the attention of the system, actions are undertaken within Fault Management to define, diagnose, and correct the fault); a capacity planning tool for monitoring a plurality of predetermined system usage levels in said netcentric computing system (See page 85, paragraph [2395], Capacity Modeling & Planning ensures that adequate resources will be in place to meet the SLA requirements, resources can include such things as physical facilities, computers, memory/disk space...); a performance management tool for monitoring the performance of applications running on said netcentric computing system (See page 80, paragraph [2232], Performance Management tools support application performance testing...these tools monitor the real-time execution and performance of software...they are also useful in identifying potential bottlenecks or processing anomalies); a license management tool for managing and controlling license information for applications running on said netcentric computing system (See page 95, paragraph [2760], License Management ensures that software licenses are being maintained throughout the distributed system and that license agreements are not being violated); a remote management tool allowing support personnel from said netcentric computing system to take control of said client (See page 80, paragraph [2324]); an event management tool for handling a plurality of predetermined events in said netcentric computing system (See page 83, paragraph [2321-2322], Event Management receives, logs, classifies and presents event messages on a console(s) based on pre-established filters or thresholds); a systems monitoring and tuning tool for monitoring applications, middleware, databases, networks, clients and servers (See page 97, paragraph [2830-2832], Provide real time monitoring and interactive tuning of the environment.

Monitoring capabilities include the ability to measure CPU and disk utilization, memory

occupancy, transaction response time... Instance level tuning and configuration parameters

(memory, I/O, journalling) to address performance problems); a security tool that includes a

security application that provides security to said netcentric computing system, said security tool

configured to limit access of said client to said server based on role based access control (See

page 44, paragraph [1099], page 152, paragraph [3980]); Security Management tools provide the

components that make up the security layer of the final system, and may provide required

security controls); a user administration tool for administering users of said netcentric computing

system (See page 91, paragraph [2625-2626]); a production control application set for scheduling

and handling a plurality of production processes on said netcentric computing system, said

production control application configured to automatically archive a predetermined set of files

(See page 85, paragraph [2396-2397], page 86 paragraph [2454] and page 89, paragraph [2563-

2564], Ensures that production activities are performed and controlled as required and as

intended. Production Scheduling determines the requirements for the execution of scheduled

jobs across a distributed environment); and a help desk tool including a help application that

provides users of applications on said netcentric computing system with assistance, said help

desk tool adapted to measure the performance of support personnel (((See page 82 paragraph

[2302-2312] and page 83, paragraph [2324-2326]; As with End User Services in the centralized

model, the Help Desk is the single point of contact for all end users. This unit has end-to-end

accountability for all user incidents and problems (See page 83, paragraph [2324-2326]).

c.   As per claim 2, Guheen et al teaches wherein said software distribution tool provides

automated delivery to, and installation of, applications on said server and said client (See page

56, paragraph [1481]).

d.   As per claim 3, Guheen et al teaches wherein said configuration and asset management

tool that manages a plurality of predetermined assets connected with said netcentric computing

system (See page 40, paragraph [0950]).

e.   As per claims 4, 20 and 25, Guheen et al teaches wherein said predetermined assets is

selected from the group consisting of said server, said client, a product license information file, a

warranty information file, a vendor name file, a logical device information file and a physical

device information file (See page 93, paragraph [2681]).

f.   As per claim 5, Guheen et al teaches wherein said fault management and recovery

management tool assists in the diagnosis and correction of a plurality of system faults in said

netcentric computing system (See page 84, paragraph [2373-2376]).

g.   As per claim 6, Guheen et al teaches wherein said capacity planning tool

monitors a plurality of predetermined system usage levels in said netcentric computing system

(See page 85, paragraph [2394-2395]).

h.   As per claims 7, 21 and 26, Guheen et al teaches wherein said system usage levels is

selected from the group consisting of server processing usage, server bandwidth usage, server

storage usage and client usage (See page 85, paragraph [2395]).

i.   As per claim 8, Guheen et al teaches wherein said performance management tool

monitors the performance of applications running on said netcentric computing system (See page

80, paragraph [2231-2232]).

k.   As per claim 9, Guheen et al teaches wherein said license management tool manages and

controls license information for applications running on said netcentric computing system (See

page 95, paragraph [2759-2760]).

l.   As per claim 10, Guheen et al teaches wherein said remote management tool allows

support personnel from said netcentric computing system to take control of said client (See page

80, paragraph [2324]).

m.   As per claim 11, Guheen et al teaches wherein said event management tool is responsible

for handling a plurality of predetermined events in said netcentric computing system (See page

83, paragraph [2321-2322]).

n.   As per claims 12, 22 and 27, Guheen et al teaches wherein said predetermined events is

selected from the group consisting of disk space indications, central processing unit utilization

indications, database error indications, network error indications and file and print service

indications (See page 83, paragraph [2322]).

o.   As per claims 13, Guheen et al teaches wherein said systems monitoring and tuning tool

monitors applications, middleware, databases, networks, clients and servers on said netcentric

computing system (See page 97, paragraph [2830-2832]).

p.   As per claim 14, Guheen et al teaches wherein said security tool includes applications

that provide security to said netcentric computing system (See page 44, paragraph [1099]).

q.   As per claim 15, Guheen et al teaches wherein said user administration tool is used for

administering users of said netcentric computing system (See page 91, paragraph [2625-2626]).

r.   As per claim 16, Guheen et al teaches wherein said production control application set is

used for scheduling and processing a plurality of production processes on said netcentric

computing system (See page 85, paragraph [2396-2397).

s.   As per claims 17, 23 and 28, Guheen et al teaches wherein said production control

application set is selected from the group consisting of a print management tool, a file transfer

and control tool, a mass storage management tool, a backup and restore tool, a archiving tool and

a system startup and recovery tool (See page 85, paragraph [2396-2397]).

t.   As per claim 18, Guheen et al teaches wherein said help desk tool provides a help

application for assisting users of applications on said netcentric computing system (See page 83,

paragraph [2324-2326]).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878.

The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Djenane Bayard

Patent Examiner

RUPAL DHARIA
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